

10-16-2015

State v. Peppard Respondent's Brief Dckt. 43206

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LAWRENCE G. WASDEN
Attorney General
State of Idaho
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

JESSICA M. LORELLO
Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43206
Plaintiff-Respondent,)	
)	Ada County Case No.
v.)	CR-2003-1213
)	
JOHN WILLIAM PEPPARD,)	
)	RESPONDENT'S BRIEF
Defendant-Appellant.)	
_____)	

Issue

Has Peppard failed to show any basis for reversal of the district court's order denying his untimely Rule 35 motion for a reduction of sentence?

Peppard Has Failed To Show Any Basis For Reversal Of The District Court's Order Denying His Untimely Rule 35 Motion

In 2004, Peppard pled guilty to felony domestic violence and the district court imposed a unified sentence of 10 years, with one year fixed, suspended the sentence, and placed Peppard on supervised probation for 10 years. (R., pp.61-67.) In 2005, Peppard violated his probation and the district court revoked his probation, ordered the

underlying sentence executed, and retained jurisdiction. (R., pp.128-31.) Following the period of retained jurisdiction, the district court again suspended Peppard's sentence and reinstated him on supervised probation. (R., pp.144-46.) On August 14, 2006, after Peppard violated his probation a second time, the district court revoked his probation and ordered the underlying sentence executed. (R., pp.180-83.)

Approximately seven years later, Peppard filed a motion for credit for time served and, on April 5, 2013, the district court granted the motion and entered an Amended Order Revoking Probation and Imposing Sentence, and Commitment reflecting an additional 31 days of credit for time served. (R., pp.223-24, 230-33.) One hundred and forty-three days later, on August 26, 2013, Peppard filed a Rule 35 motion for reduction of sentence, which the district court denied over a year and one-half later, on April 28, 2015. (R., pp.235-36, 256-60.) Peppard filed a notice of appeal timely from the district court's order denying his Rule 35 motion. (R., pp.261-63.)

"Mindful of the fact that the district court lacked jurisdiction to grant relief on [his] motion," Peppard nevertheless asserts the district court abused its discretion by denying his untimely Rule 35 motion for reduction of sentence because he has taken classes while incarcerated. (Appellant's Brief, pp.3-5.) Peppard has failed to show the district court erred in denying his untimely Rule 35 motion.

Idaho Criminal Rule 35 vests the trial court with jurisdiction to consider and act upon a motion to reduce a sentence that is filed within 14 days after the entry of an order revoking probation unless that motion is to reduce an illegal sentence. I.C.R. 35. The 14-day filing limit is a jurisdictional limit on the authority of the trial court to consider

a timely motion for reduction of sentence. State v. Sutton, 113 Idaho 832, 833, 748 P.2d 416, 417 (Ct. App. 1987).

On appeal, Peppard acknowledges the district court “lacked jurisdiction to grant relief” on his untimely Rule 35 motion. (Appellant’s Brief, p.4.) Indeed, Peppard’s Rule 35 motion for a reduction of sentence was not filed until 2,569 days after the entry of the order revoking probation and 143 days after the entry of the amended order revoking probation (which altered only the amount of credit for time served granted). (R., pp.180-83, 230-33, 235-36.) Because Peppard’s Rule 35 motion for a reduction of sentence was not timely filed, the district court lacked jurisdiction to consider it. The district court’s order denying Peppard Rule 35 motion must therefore be affirmed.

Conclusion

The state respectfully requests this Court to affirm district court’s order denying Peppard’s untimely Rule 35 motion for a reduction of sentence.

DATED this 16th day of October, 2015.

/s/
JESSICA M. LORELLO
Deputy Attorney General

VICTORIA RUTLEDGE
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 16th day of October, 2015, served a true and correct copy of the attached RESPONDENT'S BRIEF by emailing an electronic copy to:

JENNY C. SWINFORD
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us.

/s/

JESSICA M. LORELLO
Deputy Attorney General